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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

CINDY A., Petitioner, v. THE SUPERIOR COURT OF DEL NORTE COUNTY, Respondent; DEL NORTE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al., Real Parties in Interest.	A149310 (Del Norte County Super. Ct. Nos. JVSQ16-6002, JVSQ16-6003)

Cindy A., the mother of four-year-old L.A. and L.A.'s 19-month-old brother, J.A., who is now serving a four-year prison sentence for physically abusing her young daughter, petitions for extraordinary relief to overturn an order terminating reunification services provided to her after six months, and setting a hearing under Welfare and Institutions Code section 366.26 to establish a permanent plan for her children's adoption.[1] The basis for her challenge is that reunification services were inadequate. We deny the petition.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

BACKGROUND

On December 30, 2015, Cindy was arrested for the felony offense of inflicting traumatic injury on a child (Pen. Code, § 273d, subd. (a)), when a Del Norte County Sheriff's Department deputy responded at her home to a report from Cindy's neighbor of suspected child abuse. Cindy's daughter, L.A., nearly four years old at the time, had severe bruising on her face and told the deputy sheriff, "mommy did it, it hurts." Cindy's then ten-month-old son, J.A., appeared unhurt. Cindy admitted having "whacked" her daughter on the face twice that morning but denied trying to hurt her. An adult relative living nearby, Cindy's older daughter, Mary, reported having witnessed Cindy physically abuse both children many times in the past four months. The children were taken immediately into protective custody.

These dependency proceedings were commenced several days later, on January 4, 2016, when the Del Norte County Department of Health and Human Services ("Agency") filed dual section 300 petitions concerning the children. The petitions alleged Cindy had physically abused L.A., including hitting her on the face and upper torso, leaving bruises; had a chronic substance abuse problem that impaired her parenting abilities; and was presently in Del Norte County Jail and unable to care for the children. The petitions also alleged Cindy had been arrested some five years earlier for physically abusing three of her other children, resulting in her loss of custody of them. The petitions alleged the children's father was incarcerated in Idaho and unable to care for them.

By the time of the detention hearing the following day, the children were in licensed foster care and Cindy was still in custody in the county jail. The juvenile court ordered temporary reunification services for Cindy, including an Incredible Years Parenting class, random drug monitoring, referral to a child abuse prevention and education treatment program, a substance abuse assessment and a mental health assessment.

At some point thereafter, Cindy was released from jail, met with her social worker and, among other things, agreed to submit to a mental health intake, a baseline drug test and a drug treatment assessment.

The jurisdiction hearing took place on February 1, 2016. The court sustained the petition's allegations other than those alleging Cindy was presently incarcerated in county jail and unable to care for her children.

The Reunification Period.

On February 22, 2016, an uncontested disposition hearing took place, the children were declared dependents and reunification services were ordered.

The social worker's disposition report expressed concerns about Cindy's substance abuse problems, her emotional instability and her unmet mental health needs, some of which stemmed from a traumatic childhood. The report also recounted the details of her prior child welfare history in Idaho that resulted in the loss of her three other children.

On the other hand, the report described some positives. It observed she "has a positive attitude and has expressed her willingness to work with the Department [and] . . . has stated that she is willing to attend all classes that will enable her to care for her children. She recognizes that she needs help and is willing to accept the assistance from the Department." According to the Agency, Cindy "would like to address her mental health and substance abuse issues so she can be a better parent," believes she would benefit from the social services recommended for her, and already had begun actively participating in some of them, including a substance abuse program to which the Agency had referred her and a parenting program. According to the Agency, "[s]he would like to reunify with her children." The report noted Cindy "needs more time and support from the [Agency] to be able to provide a safe and stable living environment free from drug abuse and child abuse," but that "[t]hus far, [Cindy] has been engaging and the [Agency] is hopeful that she will be able to reunify."

The children's father was in prison in Idaho, and couldn't be reached.

The recommended case plan for Cindy, which the juvenile court approved, required her to participate in outpatient substance abuse treatment and drug testing, undergo mental health counseling, participate in two different parenting education classes, and actively seek appropriate housing for herself and her two children. Her

approved case plan also provided for a minimum of five hours of weekly visitation with her children.

The following month, not long after reunification services were ordered, Cindy was re-incarcerated in Del Norte County Jail where she remained until being transferred to serve her prison sentence.[2] According to the Agency's later six-month review report, Cindy had received a four-year sentence for inflicting injury on her child and was by then in prison in Folsom, California.

Six-Month Review Hearing.

In its six-month status review report, the Agency recommended terminating reunification services for both parents.

As noted, the Agency reported that Cindy was presently serving a four-year prison sentence for physically injuring her daughter, and was housed at the Folsom Women's Facility in Folsom, California. The report noted she had been incarcerated in the Del Norte County Jail "in March 2016 and remained [there] until she was transferred to serve her prison sentence."

The Agency didn't directly address the extent to which Cindy had complied with her case plan. Nonetheless, it reported that "[p]rior to [Cindy's] incarceration" she had received a number of services[3] and had "engaged in AOD [substance abuse] groups, attended Incredible Years Parenting program and started Pre-CAPT [parenting program]," visited her children regularly through five hours of weekly visitation, and remained in regular contact with the Agency.

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[2] The precise date she was taken into custody is not in the record; the record reflects only that it was at some point in "March 2016."

[3] Specifically, the Agency described these as "Case Management [¶] Referrals to services: PreCapt [parenting class], Mental Health, AOD [substance abuse services] [¶] Supervised visitation [¶] Social Service Aide [¶] Purchase of cell phone [¶] Purchase of cell phone minutes [¶] Transportation, [¶] Counseling [¶] Medical checkups [¶] Attempts to engage the parent in meaningful reunification services [¶] Drug testing [¶] Safety organized practice (SOP) meeting."

The Agency's efforts to assist Cindy over the following five months after she was incarcerated were reportedly more limited. As for contact, the Agency stated that it "has been corresponding with [Cindy] by mail." The Agency also reported it "has sent [Cindy] parenting packets" which "[a]t this time [Cindy] is completing," and that it "has requested information regarding services she is receiving." Finally, the Agency also disclosed that Cindy "has shared her desire to be accepted into the California Department of Corrections' Community Prisoner Mother Program; a program through the prison that would allow her to have her children and reside in a supervised center. The [Agency] has not received any additional information regarding this program or [Cindy's] likelihood of approval for the program considering her criminal charge that has resulted in her incarceration."

The Agency reported that "using the Structured Decision Making tool, the safety risk is extremely high" if the children were returned home, in addition to which the report noted that both parents are incarcerated. "It is the [Agency's] position that neither [parent] is able to provide safe, stable or adequate care to their children due to their current incarcerations."[4] The report reiterated Cindy's past child welfare case, expressed concern for the fact "the children have experienced a great deal of instability in their short lives,"[5] and opined that the children "deserve stability in a safe and nurturing environment that will promote healthy physical and emotional development."

Finally, the Agency described its efforts to find a relative placement, three of which had been unsuccessful and one of which, involving "a church friend in Boise Idaho," was inconclusive and still outstanding. The Agency reported it would continue with its "family finding" efforts.

The six-month review hearing was held on August 22, 2016. Cindy participated by telephone. At the outset, the juvenile court asked Cindy's counsel, "Are you

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[4] Father reportedly would not be eligible for parole until sometime in 2018.

[5] L.A. was born while her mother was imprisoned in Idaho and spent the first year of her life in foster care until her father was released from prison and able to reunify with her.

submitting this on the report?" to which he responded, "Yes." Other counsel submitted without argument too. The juvenile court then made a number of findings, including that "[t]he parents have not made sufficient progress toward alleviating or mitigating the causes that necessitated placement" and that reasonable services had been offered and provided to both parents. It terminated reunification services for both parents and scheduled a section 366.26 hearing for October 24, 2016. It then advised Cindy of her right to contest the ruling by writ petition, and ordered Cindy's counsel to file the petition if Cindy asked him to.

This timely petition for a writ of mandate followed. We issued an order to show cause and temporarily stayed the section 366.26 hearing.

DISCUSSION

I.

Our review of the Agency's reunification efforts in this case is quite narrow. Although Cindy's petition challenges the adequacy of reunification services provided to her, her supporting memorandum consists mostly of generalized assertions of inadequate reunification services accompanied by boilerplate recitation of legal standards. We disregard such vague claims of error.[6] (See Cal. Rules of Court, rule 8.452(b)(2) ["[t]he memorandum must . . . support each point *by argument* and citation of authority," italics added]; *Cresse S. v. Superior Court*, *supra*, 50 Cal.App.4th at pp. 955–956.) We will not comb the record for errors the parties have not raised or adequately briefed. The only

[6] We note that Cindy's one-and-a-half page writ petition is deficient in other respects too. The memorandum contains no argument headings, but of even greater concern it contains no factual summary, which has hampered our review. (See Cal. Rules of Court, rule 8.452(b)(1), (2).) Notwithstanding the short time frames governing these petitions, a supporting memorandum "must, at a minimum, adequately inform the court of the issues presented, point out the factual support for them in the record, and offer argument and authorities that will assist the court in resolving the contested issues." (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 583; accord, *Cresse S. v. Superior Court* (1996) 50 Cal.App.4th 947, 955–956.) We remind counsel in the future to better comply with these rules when discharging his responsibility to prepare a client's writ petition challenging the setting of a section 366.26 hearing. (See Cal. Rules of Court, rule 8.450(c); *Rayna R. v. Superior Court* (1993) 20 Cal.App.4th 1398, 1402.)

specific error raised in the petition is Cindy's contention that the Agency's "efforts to help her were . . . lax," because the Agency "did nothing to follow up on [her] eligibility" for the Community Prison Mother Program of the Department of Corrections mentioned in the Agency's six-month review report. That is the sole question we consider in this proceeding.

Before turning to that issue, however, we first address the Agency's argument that Cindy has forfeited review of the juvenile court's ruling, because her counsel didn't object to the termination of services at the six-month review hearing and instead submitted the matter for a decision. We disagree.

The contention that a juvenile court's ruling is unsupported by substantial evidence is not waived by a parent's failure to object in the juvenile court. (See *In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1560–1561 and authorities cited; *In re Javier G.* (2006) 137 Cal.App.4th 453, 464.) This principle is an "obvious exception" to the general rule that points not raised below ordinarily are forfeited. (See *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 17.) Put simply, a parent in a dependency proceeding "is not required to object to the agency's failure to carry its burden of proof." (*In re Javier G.*, at p. 464.)

Although it presents a closer question, on these facts we conclude her counsel also did not forfeit Cindy's right to review of the ruling by submitting the matter for a decision without argument. Counsel did not expressly consent to the termination of services. (Cf. *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476.) Nor did he state he was submitting the matter on the basis of the Agency's recommendation. Rather, as the Agency acknowledges, he submitted the issue for decision on the basis of the Agency's "report."

The distinction is significant. " '[A] parent who submits on the reports in evidence does not forfeit the right to appeal the juvenile court's orders." (*In re T.V.* (2013) 217 Cal.App.4th 126, 136; see also *In re Tommy E.* (1992) 7 Cal.App.4th 1234.) Doing so is tantamount merely to an agreement the social worker's report is the only pertinent evidence, and an implicit representation there is no additional evidence to

present. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 812.)
" 'Notwithstanding a submittal on a particular record, the court must nevertheless weigh evidence, make appropriate evidentiary findings and apply relevant law to determine whether the case has been proved. [Citation.] In other words, the parent acquiesces as to the state of the evidence yet preserves the right to challenge it as insufficient to support a particular legal conclusion.' " (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 136; accord, *In re N.S.* (2002) 97 Cal.App.4th 167, 170.) "Only when a parent submits on a social worker's *recommendation* does he or she forfeit the right to contest the juvenile court's decision if it coincides with that recommendation" (*In re T.V.*, at p. 136, italics added), as was true in the authority cited by the Agency. (See *In re Kevin S.* (1996) 41 Cal.App.4th 882, 886; see also, e.g., *In re Richard K.* (1994) 25 Cal.App.4th 580, 589–590; *Steve J.*, at p. 813.)

II.

Section 361.5 expressly requires reunification services to be provided to incarcerated parents, absent a finding on the basis of clear and convincing evidence that it would be detrimental to the child. (§ 361.5, subd. (e)(1)). "That section reflects a public policy favoring the development of a family reunification plan even where a parent is incarcerated." (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 69; accord, *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011–1012, superseded by statute on another ground as indicated in *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1504.) The consequences of failing to provide such services are inevitable: "If a parent cannot avail himself or herself of reunification services because of incarceration, it is a fait accompli that the parent will fail to comply with the service plan." (*In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1402.)

As we have said, "[t]he focus of California's dependency system during the reunification period is to 'preserve the family whenever possible.' " (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420.) Accordingly, " '[c]ourts may not initiate proceedings to terminate parental rights unless they find adequate reunification services were provided to the parents, even when the parents are incarcerated.'" (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1039.) " ' "The effort must be made to provide

suitable services, in spite of the difficulties of doing so or the prospects of success.' " " (*Ibid*.) "While 'use a gun, go to prison' may well be an appropriate legal maxim, 'go to prison, lose your child" is not.' " (*In re Brittany S., supra,* 17 Cal.App.4th at p. 1402.)

Where, as here, a child is under the age of three on the date of initial removal from parental custody, or is the sibling of such a child, the court "shall" continue the case to the 12-month permanency hearing if "reasonable services have not been provided." (§ 366.21, subd. (e)(3); see also § 361.5, subd. (a)(1)(C).)

We review the juvenile court's finding that reasonable services were offered and provided for substantial evidence. (*Patricia W., supra,* 244 Cal.App.4th at p. 419; *In re Maria S., supra,* 82 Cal.App.4th at p. 1039.) This standard is deferential: " '[a]ll reasonable inferences must be drawn in support of the findings and the record must be viewed in the light most favorable to the juvenile court's order.' " (*In re Maria S.,* at p. 1039.)

Here, Cindy has not met her burden to overcome the presumption we must make as a reviewing court that the juvenile court ruled correctly when it considered the reasonableness of the Agency's efforts concerning the Community Prison Mother Program. (See Pen. Code § 3410 et seq.) As noted, the Agency's six-month report states Cindy "has shared her desire to be accepted into the California Department of Corrections' Community Prisoner Mother Program; a program through the prison that would allow her to have her children and reside in a supervised center. The [Agency] has not received any additional information regarding this program or [Cindy's] likelihood of approval for the program considering her criminal charge that has resulted in her incarceration."[7] The Agency contends it was incumbent on Cindy to apply for the program, and we agree. We are entitled to presume Cindy received notification about the program from the probation department at the beginning of her prison term, as required

[7] The Agency argues it "investigated the possibility of enrolling [Cindy] in the community parenting program . . . , but never received a reply from the prison social worker." We disregard that point because there is no such evidence in the record.

by law.[8] And, by law, Cindy had the right "upon the receipt of such notice and upon sentencing to a term in state prison, [to] give notice of her desire to be admitted to a program under this chapter." (Pen. Code, § 3415, subd. (b).) Had she done so, the notice would have been required to be transmitted on for processing. (See *ibid.* ["The probation department or the defendant shall transmit such notice to the Department of Corrections, and to the appropriate local social services agency that conducts investigations for child neglect and dependency hearings"].) In addition to giving notice, Cindy also had to apply in writing for admission to the program. (See *id.*, § 3420.) Cindy made no argument below, nor introduced any evidence, that she was unaware of these requirements, or that the Agency in any way hindered her ability or efforts to apply. So, we cannot second-guess the juvenile court on this question and say on the limited record before us the Agency acted unreasonably.

Moreover, given the termination of her parental rights over her three other children, it also appears Cindy's prior child welfare history rendered her ineligible for the program. (See Pen. Code, § 3417, subd. (a)(3) [eligibility requirement that "The applicant had not been found to be an unfit parent in any court proceeding"].) We do not see how the Agency's failure to investigate this option more fully, had the record been more developed on this point, could be prejudicial.

DISPOSITION

The petition is denied, and the stay of proceedings is lifted. This opinion is final immediately upon filing. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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[8] Under Penal Code section 3415, subdivision (a), "The probation department shall, no later than the day that any woman is sentenced to the state prison, notify such woman of the provisions of this chapter, if the term of the state imprisonment does not exceed six years on the basis of either the probable release or parole date computed as if the maximum amount of good time credit would be granted. The probation department shall determine such term of state imprisonment at such time for the purposes of this section."

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.